

## § 700.52

production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, the Department of Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, the Department of Commerce will consider, among other things, the following criteria:

- (i) The probability that the prime contract will be awarded;
- (ii) The impact of the resulting rated orders on suppliers and on other authorized programs;
- (iii) Whether the contractor is the sole source;
- (iv) Whether the item being produced has a long lead time; and
- (v) The time period for which the rating is being requested.

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(4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 79 FR 47568, Aug. 14, 2014]

### § 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

### § 700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.*, the request has been submitted promptly and enough time exists for the Delegate Agency or the Department of Commerce to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 79 FR 47568, Aug. 14, 2014]

### § 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate

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Agencies and the Department of Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance may not be provided include situations when a person is attempting to:

- (a) Secure a price advantage;
- (b) Obtain delivery prior to the time required to fill a rated order;
- (c) Gain competitive advantage;
- (d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or
- (e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, as amended at 63 FR 31924, June 11, 1998; 79 FR 47568, Aug. 14, 2014]

### **§ 700.55 Homeland security, emergency preparedness, and critical infrastructure protection and restoration assistance programs within the United States.**

Any person requesting priority rating authority or requiring assistance in obtaining rated items supporting homeland security, emergency preparedness, and critical infrastructure protection and restoration related activities should submit a request for such assistance or priority rating authority to the Office of Policy and Program Analysis, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street SW., Washington, DC 20472; telephone: (202) 646-3520; Fax: (202) 646-4060; Email: [fema-dpas@dhs.gov](mailto:fema-dpas@dhs.gov), Web site: <http://www.fema.gov/defense-production-act-program-division>.

[79 FR 47568, Aug. 14, 2014]

### **§ 700.56 Military assistance programs with Canada.**

(a) To promote military assistance to Canada, this section provides for authorizing priority ratings to persons in Canada to obtain items in the United States in support of approved programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal

assistance in Canada in support of approved programs.

(b) The joint United States-Canadian military arrangements for the defense of North America and the integrated nature of the United States and Canadian defense industries require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(c) The Department of Commerce coordinates with the Canadian Public Works and Government Services Canada on all matters of mutual concern relating to the administration of this part.

(d) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, the supplier or vendor should contact the Canadian Public Works and Government Services Canada for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, Phase 3, Place du Portage, Level 0A1, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; Telephone: (819) 956-6825; Fax: (819) 956-7827, or electronically at [DGA.Prioritesdedefense.ACQBDefencePriorities@tpsgc-pwgsc.gc.ca](mailto:DGA.Prioritesdedefense.ACQBDefencePriorities@tpsgc-pwgsc.gc.ca).

(e) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, in accordance with its procedures.

(f) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, for such assistance. Public Works and Government Services